

# Exhibit B

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PHILLIP A. KENNER, TRUST	) NO. CV2012-055576
BENEFICIARY, THE SHANGRI-LA	)
TRUST 1999,	)
	)
Plaintiff,	)
vs.	)
	)
JOHN KAISER, TRUSTEE, THE	)
SHANGRI-LA TRUST 1999;	)
JOHN KAISER, a married man;	)
ELIZABETH KAISER, a married	)
woman; JOHN AND JANE DOES I-VII,	)
	)
Defendants.	)
JOHN R. KAISER, a married man as	)
his sole and separate property;	)
BRYAN BERARD, an unmarried man,	)
	)
Counterclaimants.	)
vs.	)
	)
PHILIP A. KENNER, a single man,	)
	)
Counterdefendant.	)
TYSON and KATHY NASH, husband	)
and wife; DARRYL SYDOR; JERE	)
LEHTINEN; DIMITRI KHRISTICH;	)
WILLIAM RANFORD,	)
	)
Intervenors.	)

DEPOSITION OF BRYAN BERARD

Phoenix, Arizona  
October 9, 2014  
8:42 a.m.

Prepared for:	BARTLOWE REPORTING SERVICES
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BY: CRYSTAL BARTLOWE, RPR  
Arizona Certified Reporter #50198

1 Q. Would it be fair for anyone who reads this  
2 transcript of your deposition to believe that if you  
3 answered the question, it's only because you  
4 understood the question?

5 A. Yes.

6 Q. When did you first meet Phil Kenner?

7 A. What does that have to do with this case?  
8 I don't feel like I have to answer that.

9 Q. Well, you do, sir.

10 A. Why?

11 Q. Because I'm asking it.

12 A. I don't think -- we're gonna -- do I go  
13 ahead? Compared to the ongoing indictment with Phil  
14 Kenner --

15 Q. When did you first meet Phil Kenner?

16 A. I don't recall. I don't recall.

17 MS. LAVONIER: Mr. Berard's been instructed  
18 not to answer that question by the FBI.

19 THE WITNESS: Correct.

20 MR. BAKER: The FBI has instructed him not  
21 to answer the question when he first met Phil Kenner?

22 MS. LAVONIER: Yes.

23 THE WITNESS: I don't recall when I first  
24 met Phil Kenner.

25 Q. BY MR. BAKER: Have you known him for more

1 Q. Okay.

2 A. End of story.

3 Q. So it was at that point you decided -- you  
4 and John Kaiser decided to cut Kenner out?

5 A. I wasn't cutting -- I don't -- I guess I  
6 don't know how to answer that -- understand that  
7 question.

8 Q. Well, here we have a deed -- we have the  
9 deed in the trust -- even though I guess you weren't  
10 aware of that -- with you and Phil Kenner as the  
11 grantors, Kaiser as the trustee and beneficiary. Now  
12 we have this deed signed by the trustee, placing the  
13 property in his own name and yours, no reference to  
14 Kenner.

15 So I'm saying, was it your and Kaiser's  
16 intention to cut Phil out of the deal, take him off  
17 the deed of the house at the time you signed  
18 Exhibit 11?

19 A. Yes.

20 Q. And that was because you believed Phil  
21 Kenner had been doing what?

22 A. I don't understand the question.

23 Q. Do you believe he had been taking your  
24 money, misappropriating your money --

25 A. Yes.

1 Q. -- stealing your money? What do you think  
2 he was doing?

3 A. Yes.

4 Q. All three?

5 A. All three.

6 Q. Did you confront Kenner about those  
7 allegations?

8 A. Yes.

9 Q. When was that?

10 A. I don't think this has anything to do with  
11 the house, and I've been advised not to ask -- answer  
12 these questions.

13 Q. By whom?

14 A. By the government.

15 Q. You mean Matt --

16 A. By the FBI.

17 Q. Matt Gigliano (phonetic) or whatever his  
18 name is?

19 A. I don't know.

20 MS. LAVONIER: The FBI's instructed him not  
21 to answer this line of questioning.

22 MR. BAKER: Not to answer --

23 THE WITNESS: That's correct.

24 Q. BY MR. BAKER: Let me get this clear.

25 Not to answer questions on whether you

1 confronted Kenner about dealings and monies relating  
2 to the PV house?

3 A. I can't --

4 MS. LAVONIER: It has nothing to do with  
5 these Promissory Notes.

6 THE WITNESS: Correct. I can answer that.

7 Q. BY MR. BAKER: Well, that's the question I  
8 asked you.

9 A. You did not. That was not the question you  
10 asked me. You asked me if I was -- if I believe that  
11 Kenner was stealing my money or all three above. It  
12 had nothing to do with the PV house.

13 Q. Well, let's leave it to the PV house and  
14 related to the PV house.

15 You said you and Kaiser --

16 A. Rephrase the question.

17 Q. -- you and Kaiser cut Kenner off, cut him  
18 out of the house, using this Joint Tenancy Deed dated  
19 March 9th, 2012, correct?

20 A. Yes.

21 Q. And at this time, March 2012, did you  
22 believe Kenner had been misappropriating or stealing  
23 or misusing monies relating to the PV house?

24 A. Yes.

25 Q. Why?

1 Q. Before or after the foreclosure?

2 A. Before.

3 Q. Okay. And what caused you to confront  
4 Kenner with your allegations?

5 A. Again, I'm not gonna answer that.

6 Q. Why not?

7 A. Because I've been instructed not to by the  
8 FBI.

9 Q. Relating to this house?

10 A. The PV house?

11 Q. Yes.

12 A. Can you ask the question one more time,  
13 please.

14 Q. You confronted Kenner, prior to the  
15 foreclosure proceedings, on misappropriation of monies  
16 relating to the PV house?

17 A. Yes.

18 Q. All right. What caused you to do that?

19 A. Basically I learned that the home was going  
20 into foreclosure through Wells Fargo. Basically  
21 Kenner waited about five months to tell me he was  
22 behind in payments, and Kenner destroyed my credit.

23 Q. All right.

24 A. So your former client.

25 Q. So at that point you confronted him and

1 A. I don't recall.

2 Q. Were you curious, when you saw that, as to  
3 what Promissory Note Tyson Nash was referring to?

4 A. I wasn't. I don't know. I don't recall.

5 Q. You continue to respond: Johnny been busy  
6 with work and me with battle.

7 What's battle?

8 A. Battle of the Blades. It's a charity show  
9 in Canada.

10 Q. Okay. Let's get on the phone this week and  
11 I'll explain. Johnny and I have been carrying the  
12 mortgage and maintenance every month so we know we  
13 want to sell it ASAP. But want done right and right  
14 price so people get their money back.

15 What did you mean by that?

16 A. I don't -- I don't -- I don't recall, to be  
17 honest with you.

18 Q. Well, at this point Tyson Nash has referred  
19 to his Promissory Note.

20 A. This was in -- what's the date? Oh, it's  
21 right there. It's October 11th.

22 So at this time, John and I haven't combed  
23 through a lot of -- again, I can't give you much  
24 detail because it goes into the investigation with the  
25 FBI. But at this time, you know, I believed that some



1 of Phil's clients would have money in the -- in the PV  
2 house.

3 Q. Which clients?

4 A. Clients.

5 Q. Which clients?

6 A. I don't know.

7 Q. Well, in October of 2011, you're stating  
8 that: Well, we need to relist it. We need those  
9 other two listings to go away. The prior realtor was  
10 crap. We need a new one. Everyone has to be patient  
11 so we get the right price and the people get their  
12 money back.

13 Is that a fair summary?

14 A. That's what I wrote. That's what I wrote,  
15 yes.

16 Q. Referring also as Tyson Nash as one of the  
17 individuals to get his money back?

18 A. Yes.

19 Q. And that's based upon the Promissory Note?

20 A. No.

21 Q. What's it based upon?

22 A. Mine and Tyson's conversation that he said  
23 he put money towards the PV house.

24 Q. Tyson responds: Don't speak? You guys beg  
25 me for money to help and then don't pay me according

1 that house 10K a month? Mortgage is for a million.

2 So we will net about 900K. So not much money to go  
3 around.

4 Why are you even telling him if you have  
5 absolutely no intention of including him in everybody  
6 gets some money?

7 A. I wasn't saying Tyson's getting any money.  
8 I don't recall.

9 Q. So why are you even telling him this stuff?  
10 It's none of his business then.

11 A. I probably should have told him it's none  
12 of his business.

13 Q. Why didn't you just tell him: Look. You  
14 don't have a Promissory Note. We didn't get the  
15 money. Buzz off?

16 A. I told you, I wasn't familiar with the  
17 Promissory Note.

18 Q. Tyson responds: You find any more on  
19 Fralies?

20 What does that mean?

21 A. I'm not gonna discuss here.

22 Q. What's Fralies?

23 A. I'm not gonna discuss it here.

24 MS. LAVONIER: Objection. He can't answer  
25 that question based on the FBI.

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1 MR. BAKER: Are you saying that's a female,  
2 Fralies?

3 MS. LAVONIER: No, I'm saying he can't  
4 answer that question.

5 THE WITNESS: You know what it is, too, so  
6 stop being sarcastic.

7 MR. BAKER: Do you know what it is?

8 (Consultation was had between Mr. Baker and  
9 Mr. Harris.)

10 MR. HARRIS: Say you've been instructed by  
11 the FBI. Are you gonna follow their advice, you know,  
12 just to get it down on the record.

13 MR. BAKER: Oh, we will. We will.

14 Q. He says: That's my main concern. Seems  
15 Divo was fairly satisfied. Gabo is peanuts compared  
16 to that for me.

17 What does that mean?

18 A. Divo is a player. And that's Cabo, Mexico.  
19 Anything else you need?

20 Q. Fralies?

21 A. I'm not telling 'ya. I was -- I'm  
22 instructed by the FBI not to speak.

23 Q. Who at the FBI?

24 A. You can find out.

25 MS. LAVONIER: The FBI has instructed

1 Mr. Berard not to answer that question.

2 MR. BAKER: The FBI's a big organization.

3 THE WITNESS: Well, do your homework.

4 MS. LAVONIER: He's not gonna be answering  
5 that question.

6 Q. BY MR. BAKER: So you won't give the FBI  
7 agent's name; is that correct?

8 A. Correct.

9 MR. BAKER: You're instructing him not to  
10 answer that question?

11 MS. LAVONIER: That's correct.

12 Q. BY MR. BAKER: You respond: Yeah. Come  
13 down. Let me know and I'll head down too. You will  
14 at least be happy to see Diamante is real and going  
15 good.

16 That's in reference to the golf course with  
17 Jowdy?

18 A. Yes.

19 Q. Are you currently employed by Jowdy?

20 A. I'm employed by Diamante, yes.

21 Q. What are the terms of your employment?

22 MS. LAVONIER: Objection. It's not  
23 relevant to this issue today.

24 Q. BY MR. BAKER: What are the terms of your  
25 employment?

1 A. I'm not gonna answer the question.

2 Q. Are you not gonna answer it on the advice  
3 of counsel?

4 A. Yes.

5 Q. Okay. How long have you worked for Jowdy,  
6 or Diamante?

7 A. I don't know. I don't recall.

8 Q. More than a year?

9 A. Yes.

10 Q. More than two years?

11 A. I don't think this is relevant to the --

12 MS. LAVONIER: This is not relevant. You  
13 don't have to answer these.

14 MR. BAKER: You're instructing him not to  
15 answer?

16 MS. LAVONIER: That's correct.

17 Q. BY MR. BAKER: Does John Kaiser work for  
18 Diamante?

19 A. I'm not gonna answer the question.

20 Q. Why not?

21 A. It's not relevant.

22 Q. That's your sole basis?

23 A. Yep.

24 Q. Not relevant?

25 A. That's correct.

1           The Interveners' funds allegedly sent to  
2 Kenner were not used on the real property and did not  
3 benefit the Kaiser Respondents. End of quote.

4           Are you aware that's your position?

5           A.     My position is I will not speak anything  
6 about the Global Settlement Fund here today, and I've  
7 been instructed by the FBI.

8           Q.     Well, that's in your Settlement -- your  
9 Settlement Conference Memorandum prepared by your  
10 attorney. So you're saying you will not discuss what  
11 your attorney has put in writing?

12          A.     That's correct. It has to do with the  
13 Global Settlement Fund. We will not -- I've been  
14 instructed by the FBI not to speak about the Global  
15 Settlement Fund here today.

16          Q.     Is it your position that Kenner may have  
17 provided the Promissory Notes to the Interveners --  
18 that's the five Promissory Notes -- to secure the  
19 payments made to the Global Settlement Fund?

20          A.     I just said, I'm not gonna respond to  
21 anything from the Global Settlement Fund. I've been  
22 instructed by the FBI.

23          Q.     Do you believe the Interveners' funds  
24 allegedly sent to Kenner were not used on the real  
25 property and did not benefit the Kaiser Respondents?

1           That's you and Kaiser.

2           A.     You can ask that question one more time.

3           Q.     Do you believe that the Interveners' funds,  
4 the monies wire transferred in response to the  
5 Promissory Notes, sent to Kenner were not used on the  
6 real property and did not benefit the Kaiser  
7 Respondents?

8           A.     What real property?

9           Q.     The Paradise Valley real property.

10          A.     No.

11          Q.     What do you believe they were used on?

12          A.     Kenner's -- Kenner's other investments or  
13 his lifestyle.

14          Q.     Okay. But nothing to do with the Global  
15 Settlement Fund?

16          A.     I'm not gonna answer a question with the  
17 Global Settlement Fund. I've been instructed by the  
18 FBI.

19          Q.     The FBI -- do you know if the FBI  
20 instructed your attorney not to make it an issue in  
21 this case?

22          A.     I do not know.

23          Q.     Let me read you another passage from your  
24 Settlement Conference Memorandum.

25                 On November 13th, 2013, law enforcement

1 officers arrested Kenner on a warrant from the Eastern  
2 District of New York in Case Number CR 13-607.

3 Allegations in indictment include a scheme  
4 to defraud 16 different people relating to real estate  
5 investments. The indictment states Kenner forged  
6 signatures on documents and spent money that was meant  
7 to be used for specific projects and investments for  
8 himself and his coconspirator.

9 Kenner took advantage of the Interveners by  
10 taking their money and providing them with forged  
11 Promissory Notes and untrue promises.

12 Kaiser Respondents also had money taken  
13 from them by Kenner. Kaiser Respondents did not act  
14 in concert with Kenner. Kaiser Respondents should not  
15 be held accountable for the actions of Kenner.

16 The Interveners' cause of action is against  
17 Kenner for taking their money and providing false  
18 promises and forged Promissory Notes.

19 Were you aware that that's your position,  
20 as drafted by your attorney?

21 A. Yes.

22 Q. All right. So tell me what law enforcement  
23 officers arresting Kenner has to do with this case?

24 A. That has to do with this case?

25 Q. Yes.



1 A. I don't know.

2 Q. Well, it says here you're alleging  
3 allegations of fraud, scheme to defraud, forged  
4 signatures on documents, and monies spent on things  
5 other than what it was to be used for.

6 Is that your position in this case?

7 A. That's my position. Phil Kenner is sitting  
8 in jail with no bail, so I think a judge in the  
9 Eastern District feels pretty -- pretty good about  
10 that as well.

11 Q. All right. So you're saying that somehow  
12 the allegations against him, completely unrelated to  
13 the Paradise Valley property, is relevant in this  
14 case?

15 A. I don't understand the question.

16 Q. Well, is Kenner charged with anything  
17 having to do with the Paradise Valley property?

18 A. No.

19 Q. All right. But yet you believe that what  
20 he is charged with is relevant to this case?

21 A. Yes.

22 Q. All right. And the FBI, whomever this  
23 individual is, has authorized you to discuss this with  
24 me?

25 A. I'm not -- I'm not allowed to discuss the

1 Global Settlement Fund.

2 Q. Is that the only thing you're not allowed  
3 to discuss?

4 A. No. Two other things.

5 Q. What are the other two things?

6 A. Little Isle IV.

7 Q. Uh-huh.

8 A. And Ledbetter, LLC.

9 Q. Okay. Are there any allegations to the PV  
10 property dealing with Ledbetter, LLC?

11 A. I'm not gonna answer that question.

12 Q. All right. So if I ask you any questions  
13 on Ledbetter, LLC -- and I have seen some  
14 documentations with that LLC -- you refuse to answer  
15 those questions?

16 A. That's correct. Instructed by the FBI.

17 Q. And you've also been instructed by the FBI  
18 not to discuss your employment with Diamante in  
19 Mexico?

20 A. I don't think it's relevant to this case.

21 Q. Okay. So that objection is on relevancy,  
22 not FBI instruction?

23 A. Instructed -- yeah, from advice from my  
24 lawyer, yes. And it has nothing to do with the  
25 Promissory Notes.

1 Are you representing Kenner or are you  
2 representing your five clients?

3 Q. Your objection is strictly relevance,  
4 correct?

5 A. Yes.

6 Q. So tell me how Kenner took advantage of the  
7 Interveners by taking their money and providing them  
8 with forged Promissory Notes or untrue promises.

9 A. I don't understand your question.

10 Q. Well, you state in your Settlement  
11 Conference Memorandum that Kenner took advantage of  
12 the Interveners -- my clients -- by taking their money  
13 and providing them with forged Promissory Notes or  
14 untrue promises.

15 Do you agree with that statement?

16 A. Yes.

17 Q. And the forged Promissory Notes are which  
18 ones, all of them?

19 A. I do not know. I am not a forgery expert.

20 Q. All right. Untrue promises, tell me what  
21 those are.

22 A. Untrue promises, I do not know.

23 Q. All right. So even though this statement  
24 appears in your pleading, you have no information as  
25 to the forged notes or the untrue promises?

1 A. I don't get that question.

2 Q. Well, again, your statement Kenner took  
3 advantage of the Interveners by taking their money and  
4 providing them with forged Promissory Notes or untrue  
5 promises, I asked you which notes are forged, and you  
6 tell me you don't know. I asked you what are the  
7 untrue promises you're referring to, and you tell me  
8 you don't know. Is that correct?

9 A. I -- I don't understand.

10 Q. What part of that don't you understand?

11 A. I don't understand what you're asking me to  
12 answer.

13 Q. What are the untrue promises that Kenner  
14 made to the Interveners?

15 A. I don't know. I wasn't -- it wasn't  
16 promissory -- I wasn't involved in the Promissory Note  
17 between Kenner, John, and your five clients.

18 Q. So as to that statement, you have no idea  
19 what the untrue promises are?

20 A. Yes.

21 Q. It says that Kaiser Respondents -- that's  
22 you and John Kaiser -- also had money taken from them  
23 by Kenner.

24 What monies did you have taken by Kenner?

25 A. I don't think that's relevant to this

1 deposition.

2 Q. It's exactly what this deposition is about.

3 MS. LAVONIER: Objection. You need to  
4 limit that to only the PV house. The instruction is  
5 not to answer the other questions.

6 MR. BAKER: I'll limit it to the contents  
7 of your Settlement Memorandum.

8 THE WITNESS: We can sit here all day if  
9 you keep doing this. I'm telling you that right now.

10 Q. BY MR. BAKER: Well, I need to because I'm  
11 entitled to.

12 A. Okay.

13 Q. Kaiser Respondents also had money taken  
14 from them by Kenner. Would you tell me what monies?

15 A. I'm not gonna speak about that.

16 MS. LAVONIER: Anything that's not related  
17 to the PV house, he will not be speaking about today.

18 Q. BY MR. BAKER: And that's on advice of  
19 counsel or the FBI?

20 A. Both.

21 Q. Kaiser Respondents did not act in concert  
22 with Kenner. What do you mean by that?

23 A. Can you ask me the question one more time?

24 Q. You state the Kaiser Respondents -- you and  
25 John Kaiser -- did not act in concert with Kenner.

1 A. I don't know what that means.

2 Q. So we're clear, when you and Kenner  
3 originally purchased this house, you intended to  
4 partnership with Kenner, correct?

5 A. Kenner was -- Kenner was basically on the  
6 ground here in Arizona, so at that time Kenner asked  
7 me to get involved in the house financially and I did  
8 that. Kenner was basically our on-ground here guy in  
9 Phoenix. I didn't know if he had money involved in  
10 the house. I just knew that I was basically -- the  
11 name was going on -- the mortgage was going under my  
12 name, and I knew that I would invest some money into  
13 the property, and Phil Kenner was my business manager  
14 and that's who I trusted at the time.

15 Q. All right. So your intent was to let him  
16 handle the whole project and you just wanted to  
17 benefit financially at the end?

18 A. Yes.

19 Q. The \$50,000 you wire transferred to him in  
20 2009, do you know what those funds were for?

21 A. I don't recall. I knew they were for the  
22 PV home, but I don't know what, that I recall, for the  
23 PV home.

24 Q. Were the renovations occurring at that  
25 time?

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1 A. It looks like -- I do not know. I can't  
2 answer that.

3 Q. Because he has not provided to us any  
4 evidence of giving Phil Kenner \$1.6 million. Did you  
5 ever discuss that with him?

6 A. Yes.

7 Q. And he stands by that story?

8 A. Yes.

9 Q. Does John Kaiser have a construction  
10 company, Kaiser Construction?

11 A. I do not know. I don't recall.

12 Q. Tell me why you believe each of my clients  
13 is not entitled to monies that are being held in  
14 escrow right now?

15 A. Phil Kenner misused their funds.

16 Q. Is that it?

17 A. That's it.

18 Q. No other reason?

19 A. Phil Kenner misused their funds.

20 Q. Okay. Did you contribute to the Global  
21 Settlement Fund?

22 A. I'm not gonna answer a question to the  
23 Global Settlement Fund. I've been advised by the FBI.

24 Q. Did John Kaiser contribute to the Global  
25 Settlement Fund?

1 A. Again, I'm not gonna answer that question.  
2 I've been advised by the FBI.

3 Q. Did you tell the, quote, FBI that the  
4 Global Settlement Funds was somehow being used by you  
5 as a defense in this lawsuit?

6 A. I am not gonna answer a question about the  
7 dealings in the Global Settlement. I've been advised  
8 by the FBI.

9 Q. Have you read Tyson Nash's and William  
10 Ranford's deposition transcripts?

11 A. No.

12 Q. Are you aware that your attorney spent  
13 maybe 30 percent of the depositions on the Global  
14 Settlement Fund?

15 A. No.

16 MR. BAKER: Okay. We'll take a short  
17 break. We're about done.

18 (A recess was taken from 12:05 p.m. to  
19 12:10 p.m.)

20 Q. BY MR. BAKER: Okay. Mr. Berard, you have  
21 refused to answer a number of questions today, stating  
22 that the FBI told you not to answer these questions.

23 I just need to make it clear. Are you  
24 gonna follow the advice of the FBI and not answer the  
25 questions that you've previously refused to answer?



1 A. Yes.

2 Q. How would you describe the relationship  
3 between Ken Jowdy and Phil Kenner?

4 MS. LAVONIER: Objection. This isn't  
5 relevant to today.

6 Q. BY MR. BAKER: You can answer.

7 A. I'm not gonna answer the question on the  
8 advice of my counsel.

9 Q. So you're not gonna advise on -- you're not  
10 gonna answer on the advice of counsel based on  
11 relevancy?

12 A. Correct.

13 Q. Ken Jowdy was the one who sued you in  
14 California, correct?

15 A. I believe so.

16 Q. And Ken Jowdy is Diamante in Mexico; is  
17 that fair to say?

18 A. Is he?

19 Q. Yes.

20 A. No.

21 Q. Is he the primary stakeholder?

22 A. He's the founder.

23 Q. Okay. And as to how long you've worked  
24 there, your relationship with Ken Jowdy, you won't  
25 answer any of those questions?

1 A. No. It has nothing to do with this case.

2 Q. That's your only objection?

3 A. Yes.

4 MR. BAKER: All right. All right. That's  
5 all I have.

6 MS. LAVONIER: Did you bring that  
7 Settlement Conference Memorandum?

8 MR. BAKER: I told you I'd get it to you.

9 THE COURT REPORTER: Do you want me to stay  
10 on?

11 MR. BAKER: No. We're done.

12 (Discussion off the record.)

13 MS. LAVONIER: We will review.

14 (Whereupon the deposition proceedings  
15 concluded at 12:11 p.m.)

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